Colson Equipment, Inc. *and* District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 14-CA-14181

July 22, 1981

DECISION AND ORDER

On February 9, 1981, Administrative Law Judge William A. Gershuny issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herein.

1. The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act on and after August 21, 1980, by refusing to honor dues-deduction cards submitted by the Union, refusing to recognize and bargain with the Union, refusing to provide requested information relevant to the Union's bargaining responsibilities, refusing to process grievances, and unilaterally changing the terms and conditions of bargaining unit employees' employment. The Administrative Law Judge found that the Union had either abandoned or lost its representative status at the time in question. Accordingly, he concluded that Respondent had no obligation to bargain with the Union and he, therefore, dismissed all 8(a)(5) and (1) allegations of the complaint. We disagree with the Administrative Law Judge and, for the reasons set forth below, we find the alleged violations.

On February 26, 1974, the Union was certified as the bargaining representative of Respondent's production and maintenance employees. Subsequently, the parties signed a contract which was effective from December 9, 1974, through December 8, 1977, and thereafter from year to year unless either party gave notice to terminate. The contract also contained a clause providing for the deduction of union dues. During the initial contract term, the Union's business agent visited Respondent's plant a number of times; there was a shop steward, and employees signed dues-authorization cards. Starting in 1977, however, the Union became less active in administering the contract. In January and February of that year, the two remaining dues-paying employees canceled their checkoff authorizations. In early December 1977, Respondent gave the Union written notice that the contract would automatically be renewed on December 9, 1977, and that wage increases would be put into effect unilaterally. The Union failed to respond to Respondent's notice.

In 1978, there was no union steward, no dues were deducted, and no grievances were filed. In December 1978, Respondent unilaterally increased wages and changed the fringe benefits. The Union made no requests to bargain with Respondent concerning such changes. In 1979, there still was no union steward, and dues were still not deducted. In April of that year, a grievance was filed which, after the Union and Respondent exchanged a series of letters concerning the matter, was denied by Respondent. In early summer 1979, the Union's business agent, Glass, met four times with employees at their request to solicit new members.

The Union was inactive at Respondent's plant for the first 6 months of 1980. In June and July 1980, however, Glass held meetings with employees at which membership applications and dues-checkoff authorization cards were distributed. On July 28, 1980, the Union submitted 55 checkoff cards to Respondent out of a unit of 104 employees. Subsequently, four of these employees sent Respondent notes requesting that their authorization cards be disregarded. On August 21, Respondent's general manager, Williams, informed employees that Respondent would not honor the checkoff cards submitted by the Union. On the same day, Williams wrote the Union advising it that Respondent would neither recognize nor bargain with the Union. Thereafter, on August 29, 1980, the Union designated an employee to serve as a shop committeeman, and submitted seven additional authorization cards. Subsequently, the Union sent Respondent, by certified mail, a letter dated October 3, 1980, which served notice of its desire to terminate the contract. Respondent refused to receive the letter. It also refused the Union's letters of October 10 and 31, 1980, which were also sent via certified mail, requesting information concerning unit employees and filing two grievances, respectively. In December 1980, the Respondent unilaterally increased wages and benefits.

The Board has long held that an incumbent union enjoys a presumption of continued majority status for the duration of the collective-bargaining agreement, irrespective of the degree to which the Union may or may not have been deficient in the administration of the agreement.[1] Here, the collective-bargaining agreement, which was effective through December 8, 1977, contained an automatic renewal clause, and the parties stipulated that the required notice of termination was not given by either party until October 1980. Therefore, we find that the agreement was in effect at all times materi-

[1] *Pioneer Inn Associates, d/b/a Pioneer Inn and Pioneer Inn Casino*, 228 NLRB 1263 (1977).

al herein, and that the Union enjoyed a presumption of continuing majority status. In order to rebut this presumption and find, as did the Administrative Law Judge, that the Union no longer enjoyed representative status because it had abandoned its responsibilities toward the employees, Respondent must show that the Union was neither willing nor able to represent employees at the time its status was called into question.[2] We believe that Respondent has not met this burden here.

Although the Union was relatively inactive in fulfilling its representative duties from 1977 through 1980, there is little evidence that employees ever sought the Union's support without receiving it. In fact, the evidence indicates the contrary. For instance, the Union both exchanged several letters with Respondent and met with the plant manager concerning employee Jerry Hamm's 1979 grievance, which was the only one filed during this period. The Union also held a series of membership meetings with unit employees in 1979. Most significantly, by holding another series of meetings with employees during the summer of 1980, by thereafter submitting the dues-deduction cards, and by designating a shop committeeman, it is clear that the Union was fulfilling its representative duties at the time its status was called into question. Accordingly, as the record fails to establish that the Union had abandoned its representative duties, we find that the Union retained its presumption of majority status, and that the Respondent was obligated to recognize and bargain with it.

In addition, Respondent contends that its refusal to bargain with the Union was lawfully based on a good-faith and reasonably grounded doubt of the Union's majority status.[3] The Board has long established that such an asserted doubt of the Union's continued majority must be raised in a context free of unfair labor practices.[4] Inasmuch as we find below that Respondent committed various 8(a)(1) violations prior to its refusal to bargain with the Union, we conclude that Respondent is precluded from asserting "good-faith doubt" as a defense to its refusal to bargain. Moreover, even in the absence of any unfair labor practices, we find that there is insufficient evidence to support a good-faith doubt of the Union's continuing majority status on and after August 1980. The Respondent attempts to demonstrate such a doubt by relying on putative evidence of the Union's inactivity and on statistical evidence of high unit employee turnover. As to the former, we have already recited proof that the Union actively represented unit employees when Respondent challenged its majority status. As to the latter, it is well established that, absent evidence to the contrary, new employees are presumed to support the incumbent union in the same ratio as their predecessors.[5]

Accordingly, we find that Respondent violated Section 8(a)(1) and (5) by refusing to honor dues-deduction cards submitted by the Union, refusing to recognize and bargain with the Union, refusing to provide requested relevant information, refusing to process grievances, and unilaterally changing the terms and conditions of employment.

2. We also disagree with the Administrative Law Judge's dismissal of the complaint's allegations that Respondent violated Section 8(a)(1) by interrogating employees, threatening to close the plant if the Union was supported by the employees, threatening to discharge an employee for engaging in union activities, and threatening stricter enforcement of work rules if the employees supported the Union.

With respect to Respondent's alleged interrogation of employees Stateler and Brandon, Stateler testified, without contradiction, that in a July 1980 telephone conversation Plant Manager Downey asked him, "What was this about [him] joining the Union and signing people up" and whether he had been forced to do so. Brandon testified, also without contradiction, that on August 21, 1980, Downey asked him "if he [Brandon] was strictly union and why people were mad." Downey further stated to Brandon that no employee would lose his job because of union support. Downey did not testify.

The Administrative Law Judge concluded that Downey's questioning of Stateler and Brandon did not constitute coercive interrogation in violation of Section 8(a)(1) because it was not associated with expressed or implied threats or promises. He further noted that Stateler's testimony was vague and unconvincing, although he did not specifically discredit it. Finally, the Administrative Law Judge noted that Brandon was assured in the same conversation that no jobs would be forfeited because of union support. The Board, however, has found that an interrogation of an employee's union sympathies need not be uttered in the context of threats or promises to be coercive,[6] and that the questioning of even an openly prounion employee reasonably tends to interfere with employees exercising their Section 7 rights and, consequently, is coercive. Further, contrary to the Administrative Law Judge, we find that Stateler's uncontradicted testi-

[2] *Pioneer Inn Associates, supra*; and *Road Materials, Inc.*, 193 NLRB 990 (1971).

[3] See *Terrell Machine Company*, 173 NLRB 1480 (1969).

[4] *Nu-Southern Dyeing & Finishing, Inc., and Henderson Combining Co.*, 179 NLRB 573 (1969), enfd. in part 444 F.2d 11 (4th Cir. 1974).

[5] E.g., *Pennco, Inc.*, 250 NLRB 716 (1980).

[6] See *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980).

mony concerning his conversation with Downey was sufficiently specific to support the finding of a violation. Finally, we note that the interrogations took place in a background of unfair labor practices committed by Respondent, the interrogator, Downey, was the plant manager; and inasmuch as the questions were not in the form of a general inquiry but instead concerned Stateler's and Brandon's own union activities or sympathies, it appears that Downey was seeking information upon which to take possible action against them in particular. Accordingly, we find that Respondent violated Section 8(a)(1) by coercively interrogating both Stateler and Brandon about their union activities.

As to the threat to close the plant, the Administrative Law Judge credited Supervisor Clayton's testimony that Stateler told him, in September 1980, that the Union had the Company "by the ass" and had so many charges and grievances against the Company that it would have to recognize the Union. In response, Clayton told Stateler that the Company always had the choice of closing up and moving. The Administrative Law Judge found that Clayton's statement did not constitute a threat to close or move the plant and could not be construed as representing Respondent's position. We disagree. The Supreme Court and the Board have long held that employer threats to close or move a plant, which are not based on objective facts, constitute a violation of Section 8(a)(1).[7] Here, Clayton's statement was made in response to his learning of the Union's increased activity, and thus can only be construed as a threat to close or move the plant because of union activities. We also note that Clayton did not cite any economic justification to support his statement. Finally, Clayton's remarks can be construed as representing Respondent's position inasmuch as employers are generally held responsible for the conduct of their supervisors.[8] Accordingly, we find that Respondent violated Section 8(a)(1) by threatening to close or move the plant because of the Union's increased activity.

With respect to alleged interrogation, and threats of loss of employment and stricter enforcement of work rules to employee Crews, Crews testified without contradiction that on June 22, 1980, Supervisor Forbus asked him whether the Union would "go over" this time and told him that he (Forbus) had Crews' authorization card but that he had not turned it in because Crews would be fired. Crews further testified that in the same conversation Forbus said that the Company would "crack down" on safety rules if the Union were successful, but that safety enforcement then would return to normal.

The Administrative Law Judge did not credit Crews' uncontroverted testimony. In making his credibility finding, the Administrative Law Judge found Crews' testimony to be vague and so confusing that the parties, at the Administrative Law Judge's urging, restructured their order of proof to ensure a clearer record. He further noted that the record was otherwise devoid of any union animus on Respondent's part. The Administrative Law Judge then found that in any event the statements attributed to Forbus were not coercive, and that stricter enforcement of safety rules is mandatory as a matter of national labor policy. Accordingly, he dismissed the complaint's allegations that Respondent unlawfully interrogated Crews and unlawfully threatened both to discharge Crews and to strictly enforce safety rules.

We disagree with the Administrative Law Judge's credibility finding and his consequent dismissal of these allegations of the complaint. While the Board attaches great weight to an administrative law judge's credibility finding based on demeanor,[9] it may proceed to an independent evaluation of a witness' credibility when the administrative law judge, such as here, has based his credibility finding on factors other than demeanor.[10] Crews' testimony, while vague and rambling in places, was direct and straightforward, as set forth above, regarding Supervisor Forbus' asking him whether the Union would go over this time, Forbus' statement that he (Forbus) would not turn in Crews' authorization card because if he did Crews would be fired, and Forbus' remark that Respondent would "crack down" on safety rules if the Union were successful. Therefore, we find that Crews' testimony was more than sufficient to establish a basis for finding the violations. Further, the record does not support the Administrative Law Judge's finding that Crews' testimony was so confusing that it caused the parties to restructure their presentation at the hearing. Finally, we have elsewhere found that Respondent committed several violations of the Act, thus negating the absence of animus as a credibility factor. Accordingly, we reverse the Administrative Law Judge's credibility finding regarding Crews. Having credited Crews uncontradicted testimony, we find, for essentially the reasons set forth above in our discussion of Respondent's interrogation of Stateler and Brandon, that Respondent violated

[7] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969); and *Starkville, Inc., et al.*, 219 NLRB 595 (1975).

[8] *Glenroy Construction Co., Inc.*, 215 NLRB 866 (1974); and *GAC Properties, Inc.*, 205 NLRB 1150 (1973).

[9] *Standard Drywall Products, Inc.*, 91 NLRB 544 (1951).

[10] *Canteen Corporation*, 202 NLRB 767 (1973); and *Valley Steel Products Co.*, 111 NLRB 1338 (1955).

Section 8(a)(1) by asking Crews if the Union would "go over" this time. Further, the Board has found that an employer may not threaten an employee with the loss of employment[11] or stricter enforcement of work rules[12] as a consequence of supporting a union. Inasmuch as Forbus' statement contained at least an implied threat of discharge for engaging in union activities as well as a threat to more strictly enforce work rules if employees supported the Union, we find that he thereby violated Section 8(a)(1).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Colson Equipment, Inc., Caruthersville, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union sympathies.

(b) Threatening to close or move the plant if the employees supported District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union.

(c) Threatening to discharge employees for supporting the Union.

(d) Threatening stricter enforcement of work rules if employees supported the Union.

(e) Refusing to recognize and bargain with the Union, upon its request, as the exclusive representative of the following appropriate bargaining unit:

> All production and maintenance employees, including leadmen, employed at the Respondent's Caruthersville, Missouri, facility, EXCLUDING office clerical employees, professional employees, guards and supervisors as defined in the Act.

(f) Unilaterally granting wage increases or otherwise unilaterally changing any other term or condition of employment of its employees, without first notifying the Union and bargaining collectively with it in good faith concerning such proposed changes, provided that nothing herein shall require Respondent to rescind any wage increase or benefit which it had previously granted.

(g) Refusing to process grievances filed by the Union.

(h) Refusing to provide to the Union requested information which is relevant to the bargaining relationship.

(i) Refusing to honor dues-deduction authorization cards submitted by the Union.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed written agreement.

(b) Provide information requested by the Union which is relevant to the bargaining relationship.

(c) Honor dues-deduction authorization cards submitted by the Union.

(d) Process grievances filed by the Union.

(e) Post at Respondent's place of business in Caruthersville, Missouri, copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representatives, shall be posted by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[11] *Cone Mills Corporation, Revolution Division*, 245 NLRB 315 (1979).

[12] See *Jamaica Towing, Inc.*, 236 NLRB 1700 (1979); and *Gulf State Manufacturers, Inc.*, 230 NLRB 558, 561 (1977).

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their union sympathies.

WE WILL NOT threaten to close or move the plant if our employees support District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union.

WE WILL NOT threaten to discharge our employees for supporting the Union.

WE WILL NOT refuse to bargain with the Union as the exclusive representative of the following appropriate bargaining unit:

All production and maintenance employees, including leadmen, employed at our Caruthersville, Missouri, facility, EXCLUDING office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally grant wage increases or otherwise unilaterally change any other term or condition of employment, of our employees, without first notifying the Union and bargaining collectively with it in good faith concerning such proposed changes provided that nothing herein shall require us to rescind any wage increase or benefit which we have previously granted.

WE WILL NOT refuse to process grievances which are filed by the Union.

WE WILL NOT refuse to provide the Union with information, upon request, which is relevant to the bargaining relationship.

WE WILL NOT refuse to honor dues-deduction authorization cards submitted by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the Union as the exclusive representative of all employees in the appropriate unit, described above, with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement.

WE WILL provide information requested by the Union which is relevant to the bargaining relationship.

WE WILL honor dues-deduction authorization cards submitted by the Union.

WE WILL process grievances which are filed by the Union.

COLSON EQUIPMENT, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held on December 9–10, 1980, in Caruthersville, Missouri, on complaint issued October 8, 1980, as amended, alleging violations of Section 8(a)(1) and (5) of the Act. Respondent's answer denies any violation of the Act.

At issue principally is whether Respondent, since the summer of 1980, unlawfully has refused to bargain with District 9 (the Union), which was certified in 1974 to represent the production and maintenance employees at Respondent's Caruthersville, Missouri, facility. Respondent contends principally that a bargaining obligation no longer exists for the reasons that the Union has abandoned the unit.

The complaint alleges also a number of threats and interrogations in the summer of 1980 in violation of Section 8(a)(1) of the Act.

Upon the entire record, including my observation of witness demeanor, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent, engaged in the manufacture and sale of hospital equipment at its Caruthersville, Missouri, facility, with annual interstate shipments in excess of $50,000, is an employer engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Refusal To Bargain*

The essential facts are not in dispute. On February 26, 1974, District 9 was certified as the bargaining representative for the production and maintenance employees, including leadmen, at Respondent's Caruthersville, Missouri, plant. A 3-year labor agreement, negotiated effective December 9, 1974, contained a provision for automatic renewal for periods of 1 year unless either party gave notice to terminate. No notice of termination was given by either party until the fall of 1980 when the Union sent a written notice of termination by certified mail. By that time, Respondent was refusing to accept any mail from the Union and the notice was returned unopened.

Also undisputed are the facts evidencing the level of the Union's activity at the plant during the past several years.

In 1976, during the initial contract term, Union Business Agent Kenoyer visited the plant a number of times and, in December, filed a grievance which promptly was resolved. There was a shop steward on the floor, but no shop committee. Only eight employees authorized the checkoff of dues in 1976, as contrasted with 13 employees in 1975.

In 1977, Respondent had no contact with any business agent, except that, in January and February, letters were received from the Union canceling the two remaining checkoff authorizations for the reason that the employees

no longer were union members. There was a shop steward in January only and no shop committee. No grievances were filed by the Union. In December, Respondent gave the Union written notice that the contract was automatically renewed on December 9 and that wage increases were being put into effect unilaterally. Bargaining was not requested by the Union.

In 1978, there was no steward and no shop committee. No dues were being deducted and no grievances were filed. Again, in December, Respondent unilaterally put into effect wage increases and other benefit changes. This time the Union was not notified and no request to bargain was made by the Union despite actual knowledge of the unilateral changes.

In 1979, there was no steward and no shop committee. No dues were being deducted. One grievance, filed by the Union in April, was summarily denied in May. A union request for records relating to the grievance was also denied. Thereafter, Union Business Agent Glass requested a meeting with General Manager Williams, but met instead with Plant Manager Downey who lacked authority to dispose of the grievance. A charge was filed by the Union on May 31, 1979, with the Board, alleging a refusal to bargain, i.e., a refusal to meet concerning the grievance, but was withdrawn by the Union in July. In May, new work rules were promulgated unilaterally and again, in December, Respondent unilaterally put into effect wage increases and other benefit changes. No notice was given to the Union and no request to bargain was made by the Union despite actual knowledge of such changes.

In June 1979, Union Business Agent Glass telephoned General Manager Williams to request that Respondent post a notice of a meeting with employees scheduled by Glass. In Williams' absence, his secretary told Glass that the notice would be forwarded to the "correct people." There is no evidence the notice was posted and, it should be noted, similar requests made by Glass to Williams himself in 1980 were ignored.

On four separate occasions during the spring and summer of 1979, Glass, at the request of some employees who were dissatisfied with the 1978 wage increases, conducted meetings with employees. The admitted purpose of the meetings was to solicit new members so that the Union could enter into negotiations for a contract "renewal" and a "new contract." At that time, there were no union members at the plant. By August, 15 to 18 employees executed membership applications and dues-checkoff authorizations. Initiation fees were waived by the Union and the employees were excused from paying dues because "it wouldn't be fair if we couldn't open the contract for their best interest." Employee Crews, who attended the 1979 meetings, testified that Glass came down to "form a union," but indicated he would not return because so few employees signed application cards. Employee Ervin, hired in December, testified that there was a union at the time, but it had no members; that he had a grievance but there was no one to prosecute it; and that he saw no contract at the time of hire, but was orally informed by Respondent as to the terms and conditions of his employment. Employee Brandon, hired in July, testified that there was neither a union nor a contract at the time and that he similarly had a grievance which was not prosecuted.

In 1980, until June, there was no communication with the Union, no shop steward, no shop committee and no dues checkoff. On June 30, Respondent received and ignored a union request for the posting of a notice of meeting. Meetings were conducted in June and July by Union Business Agent Glass and membership applications and dues-checkoff authorizations were distributed. Employees were told that Glass had submitted a resolution to the union district board requesting waiver of the $50 initiation fee and that there was a "high probability" of favorable action on the resolution. It should be noted that a similar resolution was passed in 1979 and neither initiation fees nor dues were collected from employees who executed the forms at the time. The waiver "offer" extended only to those employees who joined prior to July 31, 1980. Employee Tarpley, who attended the July meeting, testified that Glass said he would try to get a waiver and that, prior to the meeting, a co-employee gave him the same assurance. Employee Chilton, who also attended that meeting, testified that Glass said the initiation fee would be waived for those employees who joined prior to July 31. Beer was available at the meeting, but there is no evidence it was furnished by the Union or that employees were intoxicated.

The dues-checkoff authorizations all were signed in blank, Business Agent Glass having advised the employees that dues would be $16 a month or a "little more" and that no amount should be written in the space provided on the authorization form. Thereafter, no dues or initiation fees were collected by the Union from any of the employees.

By letters dated July 28, 1980, and August 29, 1980, the Union sent Respondent copies of 75 checkoff authorizations, "in accordance with Article V of the current labor agreement." Within several days of the first letter, General Manager Williams began to receive information from several employees indicating that authorizations may have been executed (1) by mistake, (2) because of threats from co employees that nonsigners would lose their jobs, or (3) because of gifts of beer made during the organization meetings. Williams also was informed that Plant Manager Downey was receiving similar complaints from other employees. In addition, inquiries were received by Williams from several employees as to whether the authorizations could be voided. By July 31, four employees gave Respondent written notes purporting to void their authorizations.

On August 21, 1980, after returning to the plant following a 3-week absence, Williams wrote the Union, advising that Respondent would not recognize or bargain with it. That same day, Williams met with assembled employees in three separate and brief sessions and, according to his clear, convincing, and corroborated testimony, which I credit, advised employees that the authorizations had been received; that numerous employees complained of threats and bribes, which conduct would be unlawful; that employees had the right to join or refuse to join a union; and that Respondent would not honor the authorizations, but would return them to the Union. He did not,

as testified to by several employees whose vague testimony in this respect cannot be credited, refer to the authorizations as "garbage" or state that the payment of dues was a waste of money.[1] Thereafter, on August 29, the Union designated employees to serve as a shop committee and sent additional authorizations to Respondent; on September 16 and October 17, it requested Respondent to post notices of meetings; and, finally, it sent by certified mail a notice to terminate the contract, a grievance and a request for information necessary for the prosecution of the grievance. The certified mail was refused and the regular mail ignored on the belief that Respondent had no obligation to recognize or bargain with the Union.

Extensive new work rules were promulgated unilaterally in February 1980 without objection by the Union and, in December of that year, wages and other benefits were increased unilaterally by Respondent. No written notice was given to the Union. The changes were made to deal with problems of productivity and to attract and retain skilled employees.

At the time of the hearing in December 1980, there were 125 unit employees, of which 52 percent were hired in 1980. Only 10 of the 125 had been employed at the plant in 1974. As of August 1, 1980, the date by which the first 1980 authorizations had been obtained, the unit consisted of 104 employees. The rate of turnover has been significant: In 1977, 100 employees left the plant; in 1978, another 100 left; and, in 1979, 60 employees left Respondent's employ.

From the foregoing, certain ultimate findings of fact can be drawn: Following its certification as bargaining agent at the Caruthersville plant, the Union in 1974 negotiated a 3-year labor agreement which provided for its automatic renewal from year-to-year in the absence of a written notice of termination.

At no time until October 1980, did the Union take any affirmative action to renew, terminate, or renegotiate the contract.

Upon expiration of the contract's initial 3-year term, Respondent, unilaterally and without objection by the Union, made annual changes in wages, benefits, and work rules at the plant.

The written agreement of 1974 no longer embodies the terms and conditions of employment at the plant.

From February 1977 (10 months prior to expiration of the contract's initial term) until July 28, 1980, there were but three exchanges between the Union and Respondent: one was the filing of a grievance which was ignored by Respondent and later abandoned by the Union; and the other two were requests by the Union that Respondent post a notice of proposed union meetings to solicit membership.

During that time, there was no shop steward or committee, the Union did not otherwise administer or enforce the contract on behalf of the employees and it did not prosecute existing employee grievances.

During that time, bargaining unit employees were not aware of the existence of a contract or a bargaining representative.

From February 1977 (when the last two checkoff authorizations were withdrawn) until the summer of 1979, the Union had no members at the plant.

At no time after February 1977 did the Union have any dues paying members at the plant. In the summer of 1979, the Union obtained 15–18 new members, but initiation fees were waived and dues were not collected. In the summer of 1980, 75 employees executed blank checkoff authorizations, but again initiation fees were waived and no dues were collected.

For the reasons set forth below, I conclude that at the times alleged in the complaint, "since August 21, 1980," Respondent was under no obligation to bargain collectively with the Union, for the reason that the Union abandoned or otherwise lost its representative status at the Caruthersville plant. Accordingly, the 8(a)(5) allegations of the complaint must be dismissed.

Board precedent is clear that, in the analogous contract-bar situation, an automatic renewal provision in the underlying labor agreement will not serve to continue the protected representative status where the Union had become defunct as to the bargaining unit members. In *Industrial Paper Stock Company*, 66 NLRB 1185 (1946), as here, the contract had not been administered, grievances went unprosecuted, employees were unaware of the contract and the "contract" no longer contained the existing terms and conditions of employment. There, and under the comparable facts of *Raymond's, Inc.*, 161 NLRB 838 (1966), the Board held that the mere existence of a contract with automatic renewal provisions would not bar an election.

Furthermore, in bargaining cases, Board precedent teaches that the presumption of majority status clearly is overcome where the circumstances similar to those here, indicate that the Union never intended to establish a real bargaining relationship, *Glenlynn, Inc.*, 204 NLRB 299 (1973); *Hill Plumbing Co.*, 190 NLRB 232 (1971), or is "unable or unwilling" to fulfill its representative functions, e.g., *Hershey Chocolate Corp.*, 121 NLRB 901, 911 (1958). Whatever the theory, the premise remains the same—representative status under the Act carries with it a bundle of obligations toward covered employees; where those employees no longer are served, the status no longer warrants protection under that law.

B. *The Downey Interrogations*

Employee Stateler testified that sometime in July 1980, during the course of a telephone conversation initiated by Stateler, Plant Manager Downey asked, "What was this about [Stateler] joining the Union and signing people up" and whether he had been forced to do so. Stateler admitted freely to joining the Union.

Employee Brandon testified that on August 21, 1980, after one of the meetings conducted by General Manager Williams, he requested a meeting with Williams. Plant Manager Downey arranged for the meeting and, while waiting for Williams, asked Brandon if he were "strictly Union" and why people were mad. On cross-examina-

[1] These findings thus dispose of the two 8(a)(1) allegations pertaining to Williams and, accordingly, pars. 5E and F of the complaint are dismissed.

tion, Brandon conceded that Downey assured him no employee was going to lose his job because of union support.

Downey, no longer employed by Respondent at the time of hearing, did not testify.

Employer interrogation is, of course, not unlawful *per se*. The test necessarily is an *ad hoc* one—whether under all the circumstances the interrogation reasonably tends to restrain or interfere with employees in the exercise of Section 7 rights. Generally, to be unlawful, interrogation must be associated with express or implied threats or promises or from part of an overall pattern tending to restrain or coerce employees with regard to their protected activities.

Applying this standard, no violation of Section 8(a)(1) is established in either case. As to Stateler, his testimony, albeit uncontroverted, was vague and unconvincing and does little to support a finding that Respondent unlawfully interrogated an employee, particularly where, as here, the record displays no antiunion sentiments on the part of Respondent and its supervisors. In any event, the question was isolated and noncoercive, being instead related to the whole question of coercion on the part of the Union and certain other employees in connection with the organizational campaign in the summer of 1980.

Similarly, as to Brandon, the testimony, even if credited, will not support a finding of unlawful interrogation. Coupled with Brandon's assurance that no jobs would be forfeited because of union support, the question at once takes on a noncoercive character.

C. *The Clayton Threat*

Employee Stateler also testified that on September 2, 1980, several weeks after the Union's last organizational meeting with employees, Supervisor Clayton stated that "[i]f the Union came in they would move the plant." Clayton admitted having a conversation with Stateler and, in response to Stateler's assertion that "[w]e've got the Company by the ass. We have got so many charges against them and so many grievances and everything that they would have to recognize the Union," he stated, "They always have the choice of closing up and moving."

As indicated earlier, the testimony of Stateler was so vague and unconvincing that it did little to support an administrative finding of a violation of Section 8(a)(1). At the same time, Clayton's testimony I find to be a more reliable account of events that transpired during that conversation. That being so, no violation is established for the reasons that the statement does not contain a threat, it was noncoercive, it could not have been understood by Stateler to constitute a threat and it could not have been understood by him to represent Respondent's position as to the Union.

D. *The Forbus Threats and Interrogation*

Employee Crews testified that on June 22, 1980, Supervisor Forbus, during a routine conversation concerning work assignments, asked him whether the Union would "go over" this time and told him (a) that he, Forbus, had found Crews' authorization card but did not turn it in because Crews would be fired, and (b) that initially the Company would "crack down" on safety rules if the Union were successful, but that safety enforcement then would return to normal.

Forbus, no longer employed by Respondent at the time of the hearing, did not testify.

The testimony of Crews, albeit uncontroverted, was particularly vague and confused and will not support administrative findings of a violation of Section 8(a)(1) of the Act. Indeed, his testimony was so confusing that the parties, at the urging of the court, restructured their order of proof to ensure that the record obtained in this case was a clear and meaningful one. Given a record which is otherwise silent as to antiunion sentiment on the part of the Company, I am unable to credit his testimony.

In any event, if the conversation concerning the finding of Crews' authorization card did in fact occur, the statements attributed to Forbus are noncoercive and easily explained by other testimony in this record which indicates that threats were being made by fellow employees that reluctant employees would lose their jobs if they did not join the Union. In addition, the strict enforcement of safety rules is hardly violative of employee rights and is not only desirable but mandatory as a matter of national labor policy.

[Recommended Order for dismissal omitted from publication.]